

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES W. BEASLEY III,

Defendant and Appellant.

C060756

(Super. Ct. No.
02F8841)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436.¹ We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 123-124.) Between August 2002 and October 2002 defendant James W. Beasley III molested five-year-old J.G. In May 2003 he entered a guilty plea to

¹ We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d at p. 438.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

committing a lewd act upon a child under the age of 14 years. (Pen. Code, § 288, subd. (a); all further statutory references are to the Penal Code.) On August 19, 2003, the court sentenced defendant to a six-year prison term, imposed a consecutive one-year term following the termination of probation in an unrelated case, imposed various fines, and awarded 512 days' credit (446 actual days in custody and 66 days for conduct). Among the fines imposed was a \$1,400.00 restitution fine. (§ 1202.4, subd. (b).)

On November 20, 2008, while incarcerated in state prison, defendant filed a pro se motion in the trial court seeking to modify the sentence pursuant to section 1260 based on his alleged inability to pay. Defendant requested the court to strike the \$1,400.00 restitution fine. The court denied the motion, and defendant appeals from that denial.

As we shall explain, the trial court lacked jurisdiction over the subject matter of defendant's postconviction motion. Accordingly, we shall dismiss the appeal.

DISCUSSIONS

Section 1260 authorizes appellate courts to reverse, affirm, or modify an appealable judgment or order. This power includes the authority to modify a sentence. However, this jurisdiction under section 1260 is solely vested in appellate courts, and a trial court may not invoke it to modify a sentence.

Once judgment is rendered and the defendant commences serving his sentence, the sentencing court is without

jurisdiction to vacate or modify the sentence, except pursuant to the provisions of section 1170, subdivision (d). (See *Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1834-1835.) The statutory exception allows a sentencing court, on its own motion, to recall and resentence, subject to the express limitation that the court loses such jurisdiction if it fails to recall a sentence within 120 days of the original commitment. (See *Dix v. Superior Court* (1991) 53 Cal.3d 442, 463-464.) A trial court may also correct a clerical error or unauthorized sentence at any time. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1205 (*Turrin*).)

Here, sentence was imposed on August 19, 2003, and defendant was committed to the custody of the Department of Corrections (now the Department of Corrections and Rehabilitation). The motion to modify defendant's sentence was not filed until November 20, 2008—well beyond the statutory 120 days; thus, the trial court lacked jurisdiction under section 1170, subdivision (d) to act upon a motion to modify defendant's sentence by reducing the restitution fine.

We addressed precisely the same issue in *Turrin*. There, we ruled: "A defendant may not contest the amount, specificity, or propriety of an authorized order of a restitution fine for the first time on appeal [citations] let alone in a motion to modify the same in the trial court after it has lost jurisdiction. Defendant is contesting the amount and propriety of an authorized order of a restitution fine. Section 1202.4, subdivision (b), authorized the amounts imposed here. And

defendant's motion raised a factual question about his ability to pay, not a pure question of law. The unauthorized sentence exception to loss of jurisdiction does not apply here."

(*Turrin, supra*, 176 Cal.App.4th at p. 1207.) We found that while sections 1202.46 and 1202.42 give trial courts continuing jurisdiction to modify victim restitution orders, their jurisdiction does not extend to restitution fines. (*Id.* at pp. 1207-1208.) The trial court was therefore without jurisdiction to modify the defendant's restitution fines and the appeal was dismissed. (*Id.* at pp. 1208-1209.)

The same rule applies to defendant's claim in the instant case. Under section 1237, subdivision (b), a criminal defendant may appeal "[f]rom any order made after judgment, affecting the substantial rights of the party." "Since the trial court lacked jurisdiction to modify the restitution fines, its order denying defendant's motion requesting the same did not affect his substantial rights and is not an appealable postjudgment order. [Citation.] The appeal should be dismissed. [Citation.]" (*Turrin, supra*, 176 Cal.App.4th at p. 1208.)

DISPOSITION

The appeal is dismissed.

We concur: RAYE, J.

SIMS, Acting P. J.

CANTIL-SAKAUYE, J.